

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of PAULINE C. SHALL, Deceased.

PAT BIHLER, SHIRLEY HILL, ROY GREEN,
and ROBERT GREEN,

UNPUBLISHED
April 29, 2003

Petitioners-Appellants/Cross-
Appellees,

v

No. 229857
Washtenaw Probate Court
LC No. 94-103862-IE

HELEN ROY,

Respondent,

and

FIRST OF AMERICA BANK PERSONAL
REPRESENTATIVE, a/k/a NATIONAL CITY
BANK,

Respondent-Appellee/Cross-
Appellant.

Before: O'Connell, P.J., and Griffin and Markey, JJ.

MARKEY, J. (concurring in part and dissenting in part),

As Mrs. Shall's personal representative, the bank must stand in her shoes. It was clearly Pauline Shall's intent that the bank account she shared jointly with her sister Mrs. Roy be left in its entirety upon her death to Mrs. Roy. The bank's actively pursuing Pauline Shall's obvious intentions were for the benefit of the estate, albeit, not financially. It is to the benefit of the estate that the testator's intentions be effectuated. The case law cited in the majority opinion certainly supports this conclusion. Moreover, the fact that there was already an action instituted between Mrs. Roy and other heirs as to the ownership of the bank account does not necessarily mean that it was either unnecessary or improper for the bank as Mrs. Shall's personal representative to also attempt to clarify the matter. Indeed it is the personal representative's duty

to pursue the testator's intentions, and MCL 700.3709 specifically provides that the personal representative may maintain an action to determine the title to property. In other words, I believe that the trial court abused its discretion by failing to recognize that it was the personal representative's responsibility to pursue the proper ownership of the jointly held bank account whereas for Mrs. Roy, it was simply a voluntary action for her to institute the litigation. Consequently, I find it antithetical for the majority to conclude that pursuing the intentions of a testator are deemed "contrary to the interest of the estate" simply because doing so would involve removing a bank account from the estate res.

For these reasons, I believe that the trial court abused its discretion in failing to award attorney fees to the bank while serving as personal representative in its pursuit to ascertain the proper owner of the jointly held bank account. I join the majority in respect to the balance of its conclusions.

/s/ Jane E. Markey